



## Potential P&C Issues of the 88<sup>th</sup> Legislative Session

ICT has identified a list of issues we anticipate arising during the upcoming legislative session, which begins January 10, 2023.

### Impact of Inflation on Personal and Commercial Lines

Since the pandemic consumers have seen a rise in the cost of goods and services, including insurance. In Texas, direct losses paid in 2021 by homeowners' multi-peril insurers totaled \$10.5 billion—an 84% increase from 2020. The 2021 loss ratio for private passenger auto in Texas was 65.17%, which is the largest ratio since 2017. This, combined with rising construction costs, replacement cost inflation, supply chain issues, and cost to repair in auto repair has put an upward pressure on rates.

Homeowners and auto insurance lines have particularly been in the spotlight as reports of increasing rates made headlines. TDI has reviewed and raised questions about rate filings but so far has not denied any rate increases like actions taken in other states. Given the increased scrutiny over rising costs in multiple sectors, we may see legislation pertaining to rates or the rate review process at the TDI filed in response. While less likely to pass in Texas, bills that question risk-based pricing (banning use of gender or credit score, for example), may be filed in response to rising rates. Other states have seen such legislation.

### Replacement Cost Coverage

Last session, Representative Julie Johnson (D-Dallas) filed [HB 1110](#), which required an insurer to make an initial payment of not less than 80% of the estimated cost to repair or replace a damaged dwelling or personal property. The bill passed the House but was never referred to a committee in the Senate. We anticipate legislation related to replacement cost will be filed again in 2023.

### TWIA

Coastal wind insurance and TWIA continue to be a topic in the Texas Legislature, particularly with coastal members. We expect that there will be legislation filed related to TWIA's funding and governance in the upcoming session. Some potential legislation we may see includes:

- **Industry Funding Proposal-** TWIA's funding structure relies heavily on debt and is not sustainable. As we have shared with members in the past, the industry trades have worked on a funding proposal to eliminate debt funding for loss payment. The most recent concept allows the state to provide a Catastrophe Infrastructure Grant of up to \$1B to the CRTF to replace the \$1B in current law that is paid by public securities. TWIA would be required to buy reinsurance to protect this initial layer. In the case it is depleted following a major event, a contingent surcharge of up to \$1 billion would be authorized requiring all property insurers to collect and remit the surcharges to support future coastal insurance losses. The concept maintains the \$1 billion assessment for insurers as a source of loss funding.



- **TWIA Rate Setting Process-** Rates continue to be an issue of contention in discussions at TWIA Board meetings. TWIA included public policy considerations to review and modify the ratemaking process in their biennial report to the legislature, which included moving the process to TDI or an independent ratemaking bureau. Last session, Representative Todd Hunter (R-Corpus Christi) had a bill ([HB 3809](#)) that would have moved the process to TDI. That bill was left pending in House Insurance.
- **TWIA Governance-** TWIA board structure and governance were topics of discussion last session and may arise again. The concept of moving TWIA's headquarters, which was proposed last session, may also come up again.
- **TWIA as a Reinsurer-** Another proposal we have seen floated by stakeholders would eliminate TWIA as a policy-issuing and servicing insurer and instead reform TWIA to be a reinsurer only.

Also, noteworthy, [SB 1448](#) from last session combined the studies required by the previous sessions (which were not completed because of COVID) and required the TWIA Legislative Oversight Board to study TWIA's funding structure, how other state's catastrophic risk pools operate, hold public meetings with testimony, and submit a report with findings and recommendations no later than January 1, 2023. As of this time, this Board has not met.

#### **Auto Repair/OEM**

Legislation regarding auto repair and the use of non-OEM parts has surfaced in sessions dating back to 2019. During the interim, the Auto Bodyshop Association of Texas (ABAT) has undertaken a campaign to send complaints to TDI from consumers that indicate auto insurers were under indemnifying policyholders for "safe and necessary OEM repairs". We expect legislation again in 2023, which may include:

- **Repeat Legislation Requiring OEM Parts-** Representative Travis Clardy (R-Nacogdoches) has filed legislation for the last two sessions, which would restrict the ability of insurers to suggest or use any non-OEM parts. Last session, his bill, [HB 1131](#) also included language prohibiting insurers from requiring the least expensive part. That bill was left pending in the House Insurance Committee. The legislation that did gain some traction, passing the Senate, was [SB 1538](#) by Senator Jose Menendez (D-San Antonio), which required new vehicles owned by an insured for 36 months or less to use OEM part, product, or repair process, unless the insured opted to use non-OEM parts, and prohibited an insurer from limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle. This bill was pushed by the Texas Automobile Dealers Association (TADA) and we expect them to file a version of this bill again.
- **Legislation Mandating Appraisal Clauses in Auto Policies-** The rights to an appraisal in auto loss disputes was front and center at a September 2022 House Insurance Committee interim hearing. This stemmed from a form filing at TDI to remove appraisal for partial loss claims. TDI previously approved such a form for another carrier in 2014. There was discussion about what remedies consumers had during the claims process when trying to repair their vehicle. While it



was not clear from the committee meeting if they might take any action regarding this issue, we may see legislation mandating appraisal clauses in auto policies subject to certain procedures.

- **Legislation Addressing Consumer Choice of Repair-** There was discussion during the interim hearing of House Insurance regarding whether insurers mandate certain repair shops. Legislation regarding the right to repair may be filed in the upcoming session.

### **UM/UIM Attorney Fees**

The *Allstate v. Irwin* decision upheld the use of the Uniform Declaratory Judgement Act in a UM/UIM case to support the award of attorney's fees. This decision paved the way for additional litigation and encourages actions designed to obtain attorney fees. Legislation will be filed to address this loophole.

### **Bad Faith and Appraisal**

The *Barbara Technologies vs. State Farm* left the door open for prompt pay claims after an appraisal award is paid. We can expect legislation to correct the incentives to keep litigation going in order to get attorney's fees and penalty interest.

### **Rebating Model Laws**

Anti-rebating model legislation has been adopted by both NCOIL and NAIC. The House Insurance Committee was also charged with reviewing Texas' insurance anti-rebating laws and model legislation related to rebates. Last session, [HB 3964](#) by Representative Lacey Hull (R-Houston) allowed insurers to offer or give for free or at discounted prices services that were related to loss control of risks covered under the insured's policy. The bill passed the House and died in the Senate. We will likely see legislation that is a hybrid of Representative Hull's bill from last session and the NAIC model law.

### **County Mutuels and Rating Laws**

Last session there were two bills, both filed by Representative Scott Sanford (R-McKinney), related to county mutuels and rating laws. [HB 3899](#) allowed all insurers to use moving violations in rate plans. [HB 3969](#) allowed an insurer in setting rates, to include, in a filing, any rating rule, rate variable, or rate classification that any other insurer has filed and implemented. While both bills failed to pass, House Insurance Chair Oliverson said he would study the issue during the interim. The crux of the issue is that county mutuels are excluded from §1953.051(a) of the Insurance Code, which prohibits an insurer from using traffic violations in the rating of auto insurance. Thus, only county mutual insurance companies are free to use offenses under the Transportation Code in the rating of automobile insurance. We expect that legislation will be filed again this session.

### **Catalytic Converter Theft**

Catalytic converter theft has increased dramatically since 2019. A new report ranked Texas second for the most catalytic converter thefts in the U.S. Texas Lt. Governor Dan Patrick announced he would make catalytic converter theft a key issue that will be addressed during the upcoming legislative session. He also assigned two Senate committees with studying the issue during the interim from both a regulatory (Senate Natural Resources) and criminal perspective (Senate Criminal Justice). Last session, [HB 4110](#) by



Senator Carol Alvarado (D-Houston) established additional requirements regarding the purchase of a catalytic converter for metal recycling entities and sellers, as well as increased penalties for buying a stolen catalytic converter. This bill has not slowed the crime and legislators will look at other solutions during the upcoming session.

### **Social Issues and Insurance**

As environmental, social, and governance (ESG) practices grow nationwide, there is also more scrutiny on companies from regulatory and political bodies. During the last legislative session, [HB 3433](#) by Representative John Smithee (R-Amarillo) aimed to prohibit refusal or renewal of an insurance policy based on political affiliation or expression. While the bill failed to pass, it did surface an issue that may play out during the next legislative session in some form. During the interim some legislators have been open about introducing legislation to bar corporations from doing business in Texas if they pay for abortions or reimburse abortion related expenses, regardless of the law in the jurisdiction where the abortion occurs. Similar proposals regarding companies who ban fossil fuels have also been floated. Reinsurers are being criticized for their investment policy decisions to not invest in fossil fuels due to potential impact on the climate and increased weather severity. We can expect some legislation influenced by social issues to be filed in the next session.

### **Workers' Compensation**

The Texas Workers' Compensation system has worked well over the years, and as a result there has not been a push for major legislative reforms. Nevertheless, some issues that may result in legislation during the 88<sup>th</sup> session include:

- Extending the COVID-19 presumption established last session for public safety employees, which are currently set to expire September 1, 2023
- Legislation related to remote dispute proceedings
- First responder definition- currently members of the military are not considered first responders and there may be a push to change that

### **Trucking Litigation**

[HB 19](#) by Representative Jeff Leach (R-Plano), which passed last session, brought truck litigation reform by creating a bifurcated process to determine liability and compensatory damages. The bill was spearheaded by TLR and the Keep Texas Trucking Coalition. We expect TLR to file a cleanup bill to this legislation.